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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MATTER OF THE INVOLUNTARY TERMINATIN OF THE PARENT CHILD RELATIONSHIP OF S.B., A.B., and A.B., MINOR CHILDREN and THEIR MOTHER, LORI BRACKEN,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A04-0610-JV-632
MARION COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner	)	
and	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee (Guardian ad Litem)	)	

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Victoria Ransberger, Judge Pro Tempore
Cause No. 49D09-0511-JT-44843

May 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Lori Bracken appeals the involuntary termination of her parental rights with respect to her minor children, S.B., Ax.B., and Ag.B., presenting the following restated issues for review:

1. Was the evidence sufficient to prove a reasonable probability that the conditions resulting in the children's removal from Bracken's care still exist?

2. Was the evidence sufficient to prove there is a reasonable probability that the reasons for placement of the children outside of Bracken's home would not be remedied?

3. Did the trial court err in shifting the burden to Bracken of proving she had sufficient income and adequate housing to support her children?

We affirm.

Bracken has four children, three of which are involved in this termination proceeding. Those three are: S.B., born on February 20, 1995, Ax.B., born January 6, 1999, and Ag.B., born August 6, 2004. The fourth child, C.W., is the oldest and still a minor, but Bracken's parental rights as to him are not adjudicated in this action. C.W., Ax.B., and S.B. have different fathers, and the identity of Ag.B.'s father is not known.

At the time of this proceeding, Bracken was not living with any of the children's fathers or another adult. On November 5, 2004, the Marion County Office, Division of Family and Children (MCODFC) filed a petition alleging that Bracken's children were CHINS. The petition was based on the following allegations:

> 5. The children are Children In Need of Services as defined in I.C. § 31-34-1 in that: one or more of the children's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of a parent, guardian or custodian to supply one or more of the children with necessary food, clothing, shelter, medical care, education or supervision; and the children need care, treatment or rehabilitation that the children are not receiving and are unlikely to be provided or accepted without the coercive intervention of the Court, as shown by the following, to wit:
>
> (A) On or about November 3, 2004, the Marion County Office of Family and Children (MCOFC) determined, by its Family Casemanager [sic] (FCM) Susan Swain, these children to be children in need of services because their mother and sole legal, custodian, Lori Bracken, uses crack cocaine while the children are in her care and custody. Additionally, Ax.B. was taken to Wishard Hospital on October 31, 2004, because he was unresponsive. [C.W., Bracken's oldest child, who is a minor, but not involved in this action] recently had ringworm and an untreated case of sever head lice. The children are endangered in Ms. Bracken's care due to her drug usage and failure to treat [C.W.'s] ringworm and head lice.

The Exhibits at 2. Bracken signed an agreed entry and the court proceeded to disposition on January 12, 2005. On that day, Bracken admitted the allegations in the petition, her children were adjudicated CHINS, and they were removed from her custody and placed in foster care. Bracken failed to appear at the February 16 dispositional hearing, and a bench warrant was issued for her arrest.

On May 18, 2005, the CHINS court learned that Bracken was not doing well in her services, that she had failed to complete a program of outpatient drug treatment, and that she had tested positive for cocaine. The court suspended her visitation rights until she obtained four consecutive negative drug screens. The court was advised on August 18, 2005, that Bracken remained uncooperative with her services and still had not completed outpatient drug treatment. The court extended the suspension of visitation privileges for an additional sixty days. Thereafter, MCODFC submitted a petition for continued suspension of visitation, and the trial court granted that request on October 3, 2005. Bracken completed a drug treatment program on October 26, 2005, and her visitation privileges were subsequently reinstated. On January 31, 2006, Bracken again tested positive for cocaine. On February 7, 2006, based at least in part upon the recommendation of a therapist that visits with Bracken were damaging the children's mental health, the court granted MCODFC's request to again suspend Bracken's visitation rights. Those rights were never reinstated.

On November 15, 2005, MCODFC filed a petition to terminate Bracken's parental rights. On August 16, 2006, a fact-finding hearing was conducted on the petition and on August 31, 2006, the trial court entered an order granting the petition and terminating Bracken's parental rights. The court issued findings and conclusion in conjunction with its order, including the following:

> 17. Lori Bracken attended Parent Education classes at Lutheran Child and Family Services, and completed the class with a slight increase in pre- and post—scores, but in the classes was often disruptive, with

inappropriate questions, sexual references, and she frequently had to be redirected, resulting in difficulty determining her level of understanding due to poor participation in the class sessions.

18. Lori Bracken's participation in supervised visitation is found to have been at times not age appropriate, lacking in proper concern for the self-inflicted injury to her daughter, at times lacking in appropriate parent-child boundaries, and to display a lack of parenting skills.
19. Lori Bracken's participation in supervised visitation is found to have lacked nurturing and attention to the needs of the children.
20. Lori Bracken's participation in supervised visitation is found to have not displayed appropriate attachment by the children to her.
21. [Ax.B.] has special needs, including generalized anxiety, low peer to peer skills or interest, a skin disorder, trouble in school, and he has been on several different medications. There is a great amount of anxiety to [Ax.B.] when visits are reintroduced and his mother's participation is inconsistent.
22. [Ag.B.], age 2, eats uncontrollably if not monitored to the point of regurgitation. She is under doctor's care for a possible genetic disorder.
23. [S.B.] has had at least one episode of self-mutilation and remains in counseling.
24. Mother's eldest child is in long-term placement for acting out behavior and emotional issues. He is not a part of this termination of parental rights action, however Mother's visits with all 4 children result in her spending inordinate attention only on this eldest child, a 15-year-old boy. Mother has had to be redirected by the counselor when she has asked her eldest to sit on her [lap], and excluded the other children from her attention.
25. Lori Bracken has not visited with the children since February 2006.
26. Following inappropriate behavior by the mother Lori Bracken at supervised visits, the Crisis Sexual Abuse Assessment, referred by the family case manager for the older sibling, was made and specified concerns leading to a recommendation for counseling.
27. Lori Bracken denies her drug use has been a problem to her family, and further she either lacks understanding or fails to have insight into the fact that she has a drug use problem.
28. During the CHINS case, Lori Bracken has had drug screens positive for cocaine and morphine and dilute screens, missed screen dates, although she has had mostly negative screens for approximately six months.

* * * * *

30. Lori Bracken has failed to follow the recommendations of the intensive outpatient drug treatment program to consistently attend 12 step meetings and to keep in contact with a sponsor to assist her in abstinence from further drug use. She has not been to meetings for over a month.
31. Lori Bracken failed to progress sufficiently to a point in services that the respondent's drug use is no longer a concern for the child's safety and well-being.

* * * * *

34. Mother has failed to document that she has adequate housing and a legal source of income to support herself and her children, both of which are elements of the Court's participation decree for the possible reunification of mother and children.
35. The reasons for the removal of the children from mother's custody have not been remedied. Mother lacks insight as to even a basic understanding as to why her visits with the children were discontinued. All of her children have special needs, needs which Mother has made no effort to understand.

Appellant's Appendix at 12-14. Bracken appeals the order terminating her parental rights.

The involuntary termination of parental rights is "the most extreme sanction that a court can impose." *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*, *cert. denied*, 534 U.S. 1161 (2002). Thus, we view termination as an option to be pursued only when all other reasonable efforts have failed. *In re L.S.*, 717 N.E.2d 204. Parental rights are not terminated in order to punish the parents, but rather to protect their children. *Id*. Thus, although parental rights are of constitutional dimension, they may be terminated when the parents cannot or will not fulfill their parental responsibilities. *Id*.

In order to effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the elements set out in Ind. Code Ann. § 31-35-2-4(b)(2) (West, PREMISE through 2006 Second Regular Session). Those elements are:

> (B) there is a reasonable probability that:
>
> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
>
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
>
> (C) termination is in the best interests of the child; and
>
> (D) there is a satisfactory plan for the care and treatment of the child.

Bracken contends the trial court impermissibly shifted to her the burden of proving she had sufficient means to raise the children, and also challenges the sufficiency of evidence proving element (B)(i) above.

In determining whether sufficient evidence supports the termination of parental rights, as is the case with other sufficiency challenges, we neither reweigh the evidence nor judge the credibility of witnesses. *In re Involuntary Termination of Parent Child Relationship of A.H.*, 832 N.E.2d 563 (Ind. Ct. App. 2005). We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id*. We will not set aside an order terminating parental rights unless it is clearly erroneous. *Id*.

1 & 2.

Bracken contends the evidence was not sufficient to prove there is a reasonable probability that the conditions resulting in the children's removal still exist, and that they have not been remedied. We address these issues together because they are closely related.

The children were removed from Bracken's home because of Bracken's drug use and because she could not meet their needs. Bracken claims upon appeal those conditions no longer exist. It is true that Bracken completed a drug treatment program in May 2006 and, at the time of the final hearing, had not tested positive for cocaine in over six months, and it is also true that she met all of the requirements for graduating from her parenting classes. It is apparent from the record, however, that those facts do not clearly indicate that Bracken has overcome her drug problem and learned to meet her children's needs.

Bracken received a total of three drug referrals from the MCODFC. She did not complete the first one, but did complete the second one on October 25, 2005. She relapsed, however, on January 31, 2006. With respect to the third referral, Bracken began treatment in April 2006, and completed the program approximately three months before the termination hearing, on May 25, 2006. At the conclusions of the final program, Bracken's counselor recommended that she continue to attend the twelve-step meetings and to contact her sponsor. Yet, at the time of the final hearing, Bracken had not attended a twelve-step meeting for more than a month. Moreover, she was able to

recall only a couple of the steps of the program when asked to recite them at the final hearing. We note also Bracken denied that her drug use had been a problem for her family, and even claimed that she had never been addicted to cocaine. She informed her home-based counselor that she did not need any type of support system to deal with her drug use because she could stay clean on her own. This supports the trial court's finding that Bracken lacks either understanding or insight into the fact that she had a drug problem in the first place, much less that she had implemented strategies to deal with it. Multiple relapses in the CHINS period and the failure to implement a strategy to deal with her drug addiction in the future supports the trial court's conclusion that Bracken still has, and has failed to remedy, that problem.

Another reason for the children's removal was Bracken's failure to meet their needs, with a specific example being her failure to seek treatment for one of her children who was afflicted with a severe case of head lice and ringworm. In fact, the evidence reveals that each of Bracken's children have special needs. S.B. takes medication for depression and ADHD, and self-mutilates after visits with Bracken. Ax.B. has ADHD and experiences anxiety and impulsivity issues. The social worker who served as the case manager for Ax.B. testified that Ax.B. acted out when he had regular visitation with mother, and then his behavior "leveled off" and he became "manageable" again when visitation with his mother ceased. *Transcript* at 81. Ag.B. has an eating disorder. All three children involved in this action either are or soon will be receiving counseling and treatment for their problems.

Babe Longanecker was a social worker for Valle Vista Health Systems. She provided supervision for visits between Bracken and her children. On January 23, 2006, she documented her observations and evaluation of those visits. Generally, she described Bracken as "overly focused" on C.W., to the exclusion of the others. *The Exhibits* at 39. In fact, Longanecker stated that Bracken's focus on C.W. causes Bracken to "neglect[] the needs, and desires of her other children." *Id*. Longanecker described Bracken as engaging in several behaviors that required redirection, including (1) focusing on the fact that her two younger children are biracial, referring to them by names such as Mexicana and Enchilada, pressing them to play with Hispanic dolls, and teaching them curse words in Spanish, (2) engaging in age-inappropriate behavior with her teenage son, (3) holding her young daughter in an unsafe manner, (4) and, on one occasion, when Bracken became annoyed at Longanecker's redirection, "she began playing with a noisemaker, and looking at [Longanecker] to make sure that [Longanecker] was annoyed with her toy." *Id*.

This evidence was sufficient to support the conclusion that there is a reasonable probability that Bracken will not be able to meet her children's needs. Thus, there is sufficient evidence to prove not only that the conditions resulting in the children's removal from Bracken's home still exist, but also that they will not be remedied.

3.

Finally, Bracken contends the trial court erred in shifting to her the burden of proving she had sufficient income and adequate housing to support her children. In

support of this contention, Bracken cites the language of the termination order, viz., "Mother has failed to document that she has adequate housing and a legal source of income to support herself and her children", and "she has not proven sufficient income to support her family." *Appellant's Appendix* at 14.

In a February 2005 participation decree, Bracken was ordered to "secure and maintain a legal and stable source of income, including public assistance, adequate to support all the household members," and to "obtain and maintain suitable housing with adequate bedding, functional utilities, a supply of food and food preparation facilities and that the home remain home [sic] and safe for all residing therein." *The Exhibits* at 14.

At the termination hearing, Bracken admitted that she lived in a one-bedroom apartment at the time and claimed that if she was reunited with her children, she would have "no problem" getting a "bigger house." *Transcript* at 111. She explained that she had recently married a man and they had moved into her apartment. She had been living in the apartment since August of 2006, after living in another apartment for four months. Before that, she had lived with her sister from September 2005 to March 2006. All the while, the termination case was ongoing and Bracken had been apprised that she needed to secure housing sufficient for herself and four children. Bracken does not dispute the accuracy of the finding indicating that she lives in a one-bedroom apartment, nor could she. She supplied that information herself. She did so upon questioning by her attorney, the attorney for the MCODFC, and by the trial court. We fail to discern how obtaining the information from Bracken in that manner, as opposed to from an independent

investigation of the subject, was improper. Such did not constitute an impermissible shifting of a burden to prove the adequacy of her living arrangements.

The same is true of proving her income. She testified that, at the time of the final hearing, she had been working at a Wendy's restaurant for several months, working approximately thirty-seven hours per week and earning $6.75 per hour. Before working at Wendy's, Bracken had worked as a home health aide for four months. Prior to that, she worked for at least three restaurants. Given her recent history of moving from job to job without staying at any one job for more than a few months, the trial court was entitled to conclude that Bracken had failed to establish stable and sufficient employment. Again, it is of no moment that these facts were established through Bracken's testimony, as opposed to some other means.

The trial court did not err in concluding there is a reasonable probability that the conditions resulting in the children's removal from Bracken's care still exist and will not be remedied, and that Bracken did not have sufficient income and adequate housing to support her children.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.